

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:6

PLR-134399-13

Date:

December 11, 2013

### Legend

Parent =

Date 1 =

Date 2 =

Company Official =

Tax Professional 1 =

Tax Professional 2 =

Dear :

This letter responds to a letter dated August 2, 2013, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. In particular, Parent is requesting an extension of time for the consolidated group of which Parent is the common parent to make a closing-of-the-books election under § 1.382-6(b) of the Income Tax Regulations (the "Election") with respect to an ownership change, within the meaning of § 382 of the

Internal Revenue Code. Additional information was received in a letter dated October 23, 2013. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group (the "Parent Group"). On Date 1, the Parent Group experienced an ownership change as defined in § 382(g) and, consequently, § 382(a) limited its ability to offset post-change taxable income by pre-change losses.

Parent was required to file the Election in order to close its books with respect to the ownership change. The Election was due on Date 2. Parent intended to file the Election, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the taxable year for which the Election should have been filed or any subsequent taxable year. Parent has represented that it is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time Parent requested relief.

Section 1.382-6(b)(1) allows a loss corporation to elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

The election by a taxpayer to close its books under § 1.382-6(b) with respect to an ownership change is a regulatory election. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes to the satisfaction of the Commissioner that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, Tax Professional 1, and Tax Professional 2 explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has shown it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, provided that, and to the extent that, the Parent Group qualifies substantively to file the Election, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

Parent should file the Election in accordance with § 1.382-6(b)(2). The Parent Group's return must be amended to attach the election statement required by § 1.382-6(b)(2). A copy of this letter must be attached to the election statement. If Parent files its amended return electronically, Parent may satisfy the requirement of attaching a copy of this letter by attaching a statement to the Parent Group's amended return that provides the date and control number (PLR-134399-13) of this letter ruling.

The above extension of time is conditioned on the Parent Group's tax liability, if any, not being lower in the aggregate for all years to which the Election applies than it would have been if the Election had been timely made (taking into account the time value of money). We express no opinion as to the Parent Group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Internal Revenue Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in this letter.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made under penalty of perjury by Parent, Company Official, Tax Professional 1, and Tax Professional 2. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under

§ 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Ken Cohen*  
Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: